

IN THE COURT OF COMMON PLEAS  
WASHINGTON COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JANINE LITMAN and TIMOTHY MAS-  
TROIANNI, individually and jointly,

Plaintiffs,

v.

CANNERY CASINO RESORTS, LLC, a Ne-  
vada limited liability company,  
WASHINGTON TROTTHING ASSOCIATION,  
INC., a Delaware corporation, WTA  
ACQUISITION CORP., a Delaware cor-  
poration, CANNERY CASINO RESORTS,  
LLC, CANNERY CASINO RESORTS and  
WASHINGTON TROTTHING ASSOCIATION,  
INC. t/d/b/a THE MEADOWS RACETRACK  
& CASINO, an unincorporated asso-  
ciation, CANNERY CASINO RESORTS, an  
unincorporated association consist-  
ing of one or more yet unidentified  
natural and/or legal per-sons, in-  
dividually and jointly,

Defendants.

CASE NO: 2012-8149

**BRIEF IN SUPPORT OF MOTION FOR  
SANCTIONS**

On behalf of Plaintiffs

Counsel of Record for this Party:

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**IN THE COURT OF COMMON PLEAS  
WASHINGTON COUNTY, PENNSYLVANIA  
CIVIL DIVISION**

JANINE LITMAN and TIMOTHY MAS-TROIANNI,  
individually and jointly,

CASE NO: 2012-8149

Plaintiffs,  
v.

**BRIEF IN SUPPORT OF MOTIONS FOR  
SANCTIONS**

CANNERY CASINO RESORTS, LLC, a Nevada limited liability company, WASHINGTON TROTting ASSOCIATION, INC., a Delaware corporation, WTA ACQUISITION CORP., a Delaware corporation, CANNERY CASINO RESORTS, LLC, CANNERY CASINO RESORTS and WASHINGTON TROTting ASSOCIATION, INC. t/d/b/a THE MEADOWS RACETRACK & CASINO, an unincorporated association, CANNERY CASINO RESORTS, an unincorporated association consisting of one or more yet unidentified natural and/or legal persons, individually and jointly,

Defendants.

**BRIEF IN SUPPORT OF MOTION FOR SANCTIONS**

Context is everything. This case was filed in 2012. Defendants filed three (3) sets of Preliminary Objections: to every count in each of the three sets; on the eve of the argument for the preliminary objections, Defendants filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction (and after 10 months of pending litigation); Defendants then filed a Motion for Reconsideration of this Court's Order Denying Dismissal for Lack of Subject Matter Jurisdiction (with two presentations, the first to Judge Emery, and then emailed multiple supplements); Defendants refused to provide any discovery production,<sup>1</sup> for which an Order compelling responses was entered; Defendants filed a Motion to "Amend" the Discovery Order; and, Defendants have even filed Preliminary Objections to Plaintiffs' Reply to Defendants' New Matter, the subject of this motion and brief. Pleadings still are not closed and only yesterday, March 20, 2014, did Plaintiffs finally receive the first of some discovery production from Plaintiffs' June 10, 2013 request.

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<sup>1</sup> This Court will probably recall that Defendants were holding all production hostage and refused to produce anything (not even non-confidential documents) unless the undersigned agreed to attorneys' eyes only provisions, even after the undersigned stipulated on the record to maintain confidentiality.

The Motion for Sanctions was served and filed by Plaintiffs because Defendants' actions are not calculated to litigate this case on the merits, but are without merit, frivolous, and intended to increase the cost of litigation to burden and to harass Plaintiffs.

On February 10, 2014, as has been the case repeatedly, Defendants served more objections, this time being Preliminary Objections to Plaintiffs' Reply to New Matter. On the same date, Plaintiffs served a 1023.2 Motion for Sanctions.

Defendants "Preliminary Objections" ostensibly fail to reference a basis pursuant to Pa.R.Civ.P. 1028, which is the provision that grounds proper preliminary objections. Defendants even pleaded in "New Matter" averments regarding the claims and subject-matter jurisdiction in complete and utter disregard of the multiple rulings of this very Court. That is, Defendants are simply being contrite and contrary to this Court's rulings, to wit, Defendants averred:

**1. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.**

**14. The Court lacks subject matter jurisdiction over Plaintiffs' claims.**

Defendants' counsel signed pleadings with these averments, among others, notwithstanding all of the prior motion practice, and this Court's rulings (and even following significant time and argument for Defendants' request for reconsideration of this Court's subject-matter jurisdiction ruling). Defendants claim this time is that Plaintiffs' denials must, once again, re-state facts already in dispute of record. However, the Pennsylvania Rules of Civil Procedure, Rule 1019(g), are clear:

**Any part of a pleading may be incorporated by reference in another part of the same pleading or in another pleading in the same action. A party may incorporate by reference any matter of record in any State or Federal court of record whose records are within the county in which the action is pending, or any matter which is recorded or transcribed verbatim in the office of the prothonotary, clerk of any court of record, recorder of deeds or register of wills of such county.**

Pa.R.Civ.P. 1019(g) (emphasis supplied). Pursuant thereto, Plaintiffs are entitled to deny factual averments with the contents of the pleading already of record. Indeed, Defendants' "New Matter" (such as naming their motion ef-

fectively to rescind this Court's discovery order as an "Amendment") is not "New" but merely argumentative "to the contrary" provisions that could have been, were, or should have been argued in Defendants' Answers in chief. The "New Matter" items are merely facts already in contention by Plaintiffs' averments and Defendants' prior denials.

Rule 1023.1 provides, in pertinent part:

**(c) The signature of an attorney or pro se party constitutes a certificate that the signatory has read the pleading, motion, or other paper. By signing, filing, submitting, or later advocating such a document, the attorney or pro se party certifies that, to the best of that person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances,**

**(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation,**

**(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law[.]**

After Plaintiffs' counsel took the time and endured the burden of sending the 1023.1 notice, Defendants informally stated that they would remove certain Preliminary Objections. See, Certification, Exhibit 3. To this, Plaintiffs' counsel took the time and endured the further burden to notice Defendants to meet their record Preliminary Objections with a formal withdrawal of Preliminary Objections. See, Certification, Exhibit 4. Defendants have obdurately refused the request and all of Defendants' Preliminary Objections remain of record, including the continued claims that contradict this Court's rulings.

Whether or not withdrawn of record, the crucial fact is that the act was done only after the undersigned had to take the time and endure the burden of preparing the motion for sanctions. The Court can now observe the course of conduct by Defendants. Defendants have contritely failed to withdraw of record within the 28 days. Even so, Defendants' initial act itself at the time of filing the initial set of Preliminary Objections is evidence for this Court to view the context of the items that may remain, whether formally or informally.

For the context of this case, as it has been seen and reviewed by this Court, the Defendants' Preliminary Objections are being presented for an im-

proper purpose, and to harass or cause unnecessary delay or needless increase in the cost of litigation in violation of Pa.R.Civ.P. 1023.1. Context is everything, and Defendants should be sanctioned.

Plaintiffs seek sanctions against all the Defendants and its counsel of record, as well as an admonishment for such conduct.

WHEREFORE, Plaintiffs request the stated sanctions and admonishment fsstated herein.

March 21, 2014

Respectfully submitted,

TEV LAW GROUP, PC

By: /Gregg Zegarelli/

Gregg R. Zegarelli

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served on this date, by depositing the same in the United States Mail, First Class, Postage Pre-Paid, upon the following, except as stated otherwise:

PATRICK ABRAMOWICH, ESQ.  
BENJAMIN I. FELDMAN, ESQ.  
MARK J. PASSERO, ESQ.  
WILLIAM L. STANG, ESQ.<sup>2</sup>  
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March 21, 2014

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<sup>2</sup> It is noted that Mr. Stang has informally requested to longer be served on pleadings. Because of the multiple attorneys appearing for the Defendants, on February 14, 2014, the undersigned requested to know if Mr. Stang, having formally appeared of record and having personally appeared before this Court, will kindly formally withdraw his appearance of record. The undersigned's request has been ignored and unanswered by Defendants to date. Plaintiffs' request for a formal withdrawal of record is understood by the undersigned as proper, and the timing is important, particularly when sanctions are at issue.